

United States Department of the Interior



BUREAU OF RECLAMATION
Mid-Pacific Region
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Sacramento, California 95825-1898



FISH AND WILDLIFE SERVICE
California-Nevada Operations Office
2800 Cottage Way, Room W-2606
Sacramento, California 95825-1846

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IN REPLY
REFER TO:
MP-100

Lester Snow
Director, Dept. of Water Resources
State of California
1416 Ninth Street, Suite 1115-1
Sacramento, California 95814

Ryan Broddrick
Director, Dept. of Fish and Game
State of California
1416 Ninth Street, Suite 1207
Sacramento, California 95814

Re: Integration of CVPIA Actions with the Environmental Water Account

Dear Directors Snow and Broddrick:

In the decade since the Principles of Agreement on Bay-Delta Standards between the State of California and the Federal Government (the Bay-Delta Accord) was signed, significant progress has been made in reducing the conflicts between water project operations and fisheries protection and restoration. There are four significant developments that have made this progress possible: first, the investment of \$1 billion in ecosystem improvement through the Central Valley Project Improvement Act (CVPIA), CALFED's Ecosystem Restoration System Program and other programs; second, the creation, dedication and management of new water supplies for the protection of fishery resources; third, the sophisticated interaction and understanding among water project operators and biologists from the fishery agencies; and, fourth, the continued healthy and robust collaboration and communication among the CALFED agencies and stakeholders.

This letter proposes a policy to move forward with continual improvement in the management of water available for the protection and restoration of fisheries resources in the Central Valley of California. Specifically, we propose to take two related actions: (1) We intend to modify the manner in which Section 3406(b)(2) of the Central Valley Project Improvement Act is implemented to assure that no more than 800,000 acre-feet of water is used in any year for the primary purposes of the Act, consistent with existing law. (2) We propose in cooperation with the State to integrate operations of the Environmental Water Account with CVPIA implementation to assure that key fisheries continue to recover consistent with the goals of the CALFED Record of Decision. Consistent with the CALFED solution principles, we intend that the more efficient and effective use of these resources will benefit both our fisheries and the reliability of the water management infrastructure.

For many years, the manner in which the Department of the Interior (Interior) has implemented Section 3406(b)(2) of the CVPIA has been challenged by many groups. Most recently, the Ninth Circuit Court of Appeals issued an opinion that, among other things, affirmed that Interior may only use 800,000 acre-

feet of Central Valley Project (CVP) water for the "primary purpose" of implementing the "fish, wildlife, and habitat restoration purposes authorized by [the CVPIA]."

Interior implements its obligation under b(2) as described in the "Decision on Implementation of Section 3406(b) (2) of the Central Valley Project Improvement Act," which was released May 9, 2003. Under that decision, and consistent with the court's interpretation of b(2), CVP water used for fish restoration actions, post-1992 Endangered Species Act actions, and 1995 Water Quality Control Plan (WQCP) actions are fully credited against the Interior's b(2) obligation. However, Interior must ensure that the May 9th Decision is not implemented in a manner that results in more than 800,000 acre-feet of CVP water being used for the primary fish, wildlife, and habitat restoration purposes authorized by the CVPIA.

There exists some confusion concerning whether 1995 WQCP actions must be credited against Interior's b(2) obligation. Some interested groups have correctly observed that Interior has the discretion to count, or not to count, CVP water used for water quality actions against the 800,000 acre-feet. The 1995 WQCP prescribes numerous actions that were developed in 1994 by Interior, working in consultation with the state, to help restore Delta fisheries, including anadromous fish. In fact, these fishery actions were included in the 1995 WQCP at the request of Interior and other signatories to the Bay-Delta Accord. Counting CVP water used for 1995 WQCP fishery actions, which further the CVPIA's primary restoration purposes, toward Interior's b(2) obligation is consistent with the priority of uses prescribed by the Act.

To avoid the potential of exceeding b(2)'s 800,000 acre-feet limitation, while at the same time providing equivalent levels of fishery restoration contemplated by the CALFED Record of Decision, Interior proposes to more thoroughly coordinate implementation of sections 3406(b)(2), 3406(b)(1), 3406(b)(3), and the Environmental Water Account. Specifically, we propose that the EWA be managed in coordination with CVPIA sections 3406(b)(1) and 3406(b)(3) to cover CVP water costs of the fish restoration actions, post-1992 ESA actions, and the 1995 WQCP fishery actions in excess of 800,000 acre-feet; provided that aggregate annual water costs of the 1995 WQCP fishery actions in excess of 800,000 acre-feet will not be covered by the EWA. To accomplish this, we seek the continued cooperation of the Department of Water Resources and the Department of Fish and Game, the state agencies responsible for managing the State Water Project, fishery resources and managing their responsibilities associated with the EWA.

As we have discussed, the rules that are used to account for CVP water credited toward Interior's b(2) obligation and water used by the EWA differ in a number of respects. Chief among these differences is that water released from storage to implement fishery actions upstream under b(2) is counted against the 800,000 acre-feet even if the reservoir from which water was released subsequently refills, while EWA debt in a reservoir is extinguished if the reservoir refills.

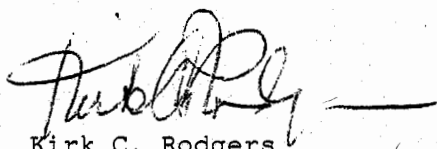
To avoid an adverse impact on EWA that might result from the integration of EWA with Section 3406(b)(2), Interior will propose a revision of the accounting period for actions taken to implement b(2). Specifically, we propose to revise the May 9th Decision to provide for a January 1 to December 31 accounting period and circulate the revised policy for public comment. This revision would mean that if EWA were used to carry out an upstream fishery action in October, November, or December, any obligation with respect to a decrease in storage would be extinguished as a result of refill. In addition, our experience indicates that a b(2) accounting period from October 1 to the succeeding September 30 creates uncertainty in forecasting fishery actions under b(2). Therefore, this change in the accounting period

would add flexibility to the implementation of (b)(2), and could add flexibility to the management of EWA by facilitating transfers of (b)(2) water to EWA.

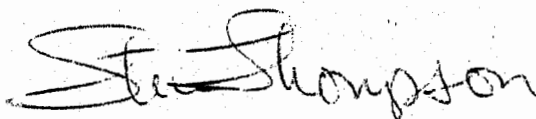
We are committed to work with your agencies to develop and implement, on a concurrent basis, a plan to finance the EWA. This includes securing assets (money, water, storage, operational changes, etc.) for the EWA to effectively meet the purposes for which it has been established.

We look forward to working with you on these proposals in furtherance of CALFED's continual improvement objectives.

Sincerely,



Kirk C. Rodgers
Regional Director
Bureau of Reclamation
Mid-Pacific Region



Steve Thompson
Manager
U.S. Fish and Wildlife Service
California-Nevada Office